

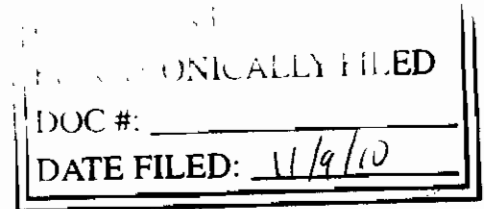
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

ALBERTO WILLIAM VILAR and
GARY ALAN TANAKA,

Defendants.



No. 05 Cr. 621 (RJS)
ORDER

RICHARD J. SULLIVAN, District Judge:

By Order dated August 25, 2010, the Court summarized the procedural history of the forfeiture judgments in this case and directed the parties to submit a joint letter no later than September 10, 2010, addressing whether the forfeiture judgments may be validly amended pursuant to Federal Rule of Criminal Procedure 36.

The Court is now in receipt of three letters, since the parties were not able to agree on a joint submission as directed by the August 25 Order. By letter dated September 7, 2010, Defendant Vilar objects to the imposition of any asset forfeiture, but dwells at length on the argument that the forfeiture order is a “nullity” while failing to address the validity of the proposed amendment under Rule 36. By letter dated September 8, 2010, Defendant Tanaka consents to the amendment under Rule 36 and requests an Amended Judgment and Commitment for Defendant Tanaka covering restitution. By letter dated September 10, 2010, the government submits that Rule 36 may not be used to amend the forfeiture judgments in this case because the Rule permits only the correction of “clerical error[s]” in the judgment. Fed. R. Civ. P. 36.

Upon review of these submissions and the Second Circuit case law concerning Rule 36 amendments, the Court finds the government’s view of the Rule persuasive. The Court therefore concludes that, although it inadvertently erred in imposing forfeiture in the amount sought by the

government, such error does not constitute a “clerical error” within the meaning of Rule 36. Accordingly, the government’s motion to amend the forfeiture judgments to include substitute property is HEREBY GRANTED according to the terms specified in the attached order dated November 9, 2010. For all the reasons stated in the August 25 Order, Defendant Vilar’s argument that the forfeiture judgments are a “nullity” is rejected and the cross-motion to vacate the restraining order of substitute assets is HEREBY DENIED. Because restitution was imposed by separate Order dated April 7, 2010, the Court declines to enter an Amended Judgment in this case.

SO ORDERED.

Dated: November 9, 2010
New York, New York



RICHARD J. SULLIVAN
UNITED STATES DISTRICT JUDGE